

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1871-MLM-E TCEQ ID: RN105085211 CASE NO.: 31542
RESPONDENT NAME: Drennan Day Custom Homes Inc.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Construction site 13100 West Highway 29, Liberty Hill, Williamson County</p> <p>TYPE OF OPERATION: Homebuilder</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on October 10, 2006, alleging that the Respondent was burning piles of vegetation within the 300-ft set back requirement. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 28, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 1759, (512) 239-2223</p> <p>TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468</p> <p>Respondent: Mr. Jon Branigan, President, Drennan Day Custom Homes Inc., Post Office Box 814, Liberty Hill, Texas 78642</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: October 10, 2006</p> <p>Date of Investigation Relating to this Case: October 10, 2006</p> <p>Date of NOE Relating to this Case: October 20, 2006 (NOE)</p> <p>Background Facts: This was a complaint investigation. Two violations were documented.</p> <p>WATER</p> <p>1) Failed to obtain authorization to discharge storm water associated with construction activities to waters in the state [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS 122.26(c)].</p> <p>2) Failed to obtain approval of a contributing zone plan ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone [30 TEX. ADMIN. CODE § 213.21(d)].</p>	<p>Total Assessed: \$16,000</p> <p>Total Deferred: \$3,200 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$6,400</p> <p>Total Paid to General Revenue: \$6,400</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that on October 17, 2006, Drennan submitted a Notice of Intent to discharge storm water to the Wastewater Permitting Division.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A)</p> <p>3) The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, cease any regulated activity at the Site until such time that a CZP has been reviewed and approved by the TCEQ Austin Regional Office;</p> <p>b) Within 30 days after the effective date of this Agreed Order, submit a CZP for review and approval to the Edwards Aquifer Protection Program;</p> <p>c) Respond completely and adequately as determined by the TCEQ, all requests for information concerning the CZP within 30 days after the date of such request or by any other deadline specified in writing; and</p> <p>d) Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 3.a. and 3.b.</p>

Attachment A
Docket Number: 2006-1871-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Drennan Day Custom Homes Inc.
Penalty Amount:	Twelve Thousand Eight Hundred Dollars [\$12,800]
SEP Amount:	Six Thousand Four Hundred Dollars [\$6,400]
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation& Development Areas, Inc. ("RC&D")
Location of SEP:	Williamson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Respondent shall contribute to RC&D for its *Abandoned Tire Clean-Up project* in Williamson County. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the RC&D and the TCEQ. The SEP contribution will be used to clean up sites in Williamson County where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping.

SEP monies will be used to pay for the direct cost of collecting and disposing of tires. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dump sites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by

removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and
Development Areas, Inc. (RC&D)
1716 Briarcrest Drive, Suite 510
Bryan, TX 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

The Respondent or its agents shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of nonperformance, the check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Drennan Day Custom Homes Inc.
Agreed Order – Attachment A Docket No. 2006-1871-MLM-E

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	23-Oct-2006	Screening	25-Oct-2006	EPA Due	
	PCW	25-Oct-2006				

RESPONDENT/FACILITY INFORMATION

Respondent	Drennan Day Custom Homes Inc.		
Reg. Ent. Ref. No.	RN105085211		
Facility/Site Region	11-Austin	Major/Minor Source	Major Source

CASE INFORMATION

Inf./Case ID No.	31542	No. of Violations	1
Docket No.	2006-1871-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Brent Hurta
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$15,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No enhancement due to Average Performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes Respondent does not meet good faith criteria.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$128
Approx. Cost of Compliance	\$2,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$15,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$15,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$15,000

DEFERRAL

20% Reduction

Adjustment -\$3,000

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY

\$12,000

Screening Date 25-Oct-2006 **Docket No.** 2006-1871-MLM-E **PCW**
Respondent Drennan Day Custom Homes Inc. *Policy Revision 2 (September 2002)*
Case ID No. 31542 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN105085211
Media [Statute] Edwards Aquifer
Enf. Coordinator Brent Hurta

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	25-Oct-2006	Docket No.	2006-1871-MLM-E	PCW
Respondent	Drennan Day Custom Homes Inc.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	31542			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN105085211			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Brent Hurta			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 213.21(d)"/>			
Secondary Rule Cite(s)	<input type="text"/>			
Violation Description	<input type="text" value="Failure to obtain approval of a contributing zone plan prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on October 10, 2006."/>			
Base Penalty	<input type="text" value="\$10,000"/>			

>> **Environmental, Property and Human Health Matrix**

		Harm			
	Release	Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors."/>					

Adjustment **Base Penalty Subtotal** **Violation Events**Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Economic Benefit (EB) for this violation**Statutory Limit Test****Estimated EB Amount** **Violation Final Penalty Total** **This violation Final Assessed Penalty (adjusted for limits)**

Economic Benefit Worksheet

Respondent Drennan Day Custom Homes Inc.

Case ID No. 31542

Reg. Ent. Reference No. RN105085211

Media [Statute] Edwards Aquifer

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description No commas or \$							
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,500	10-Oct-2006	04-Jul-2007	0.7	\$6	\$122	\$128
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of developing an Edwards Aquifer contributing zone plan from investigation date until the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$2,500****TOTAL** **\$128**



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES Assigned 23-Oct-2006
 PCW 08-Dec-2006 Screening 25-Oct-2006 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Drennan Day Custom Homes Inc.
 Reg. Ent. Ref. No. RN105085211
 Facility/Site Region 11-Austin Major/Minor Source Minor Source

CASE INFORMATION

Enf./Case ID No. 31542 No. of Violations 1
 Docket No. 2006-1871-MLM-E Order Type 1660
 Media Program(s) Water Quality Enf. Coordinator Brent Hurta
 Multi-Media EC's Team Enforcement Team 1
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No enhancement due to Average Performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A X (mark with a small x)

Notes Respondent does not meet good faith criteria.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$2
 Approx. Cost of Compliance \$2,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$1,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$1,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$1,000

DEFERRAL

20% Reduction

Adjustment -\$200

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$800

Screening Date 25-Oct-2006	Docket No. 2006-1871-MLM-E	PCW
Respondent Drennan Day Custom Homes Inc.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 31542	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN105085211		
Media [Statute] Water Quality		
Enf. Coordinator Brent Hurta		

Compliance History Worksheet>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%>> **Repeat Violator (Subtotal 3)**No **Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**Average Performer **Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary****Compliance History Notes**

No enhancement due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	25-Oct-2006	Docket No.	2006-1871-MLM-E	PCW
Respondent	Drennan Day Custom Homes Inc.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	31542			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN105085211			
Media [Statute]	Water Quality			
Enf. Coordinator	Brent Hurta			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 281.25(a)(4)"/>			
Secondary Rule Cite(s)	<input type="text" value="40 Code of Federal Regulations 122.26(c)"/>			
Violation Description	<input type="text" value="Failure to obtain authorization to discharge storm water associated with construction activities to waters in the state, as documented during an investigation conducted on October 10, 2006."/>			

Base Penalty >> **Environmental, Property and Human Health Matrix**

		Harm			
	Release	Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment Base Penalty Subtotal **Violation Events**Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation**Statutory Limit Test**Estimated EB Amount Violation Final Penalty Total This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Drennan Day Custom Homes Inc.
 Case ID No. 31542
 Reg. Ent. Reference No. RN105085211
 Media [Statute] Water Quality
 Violation No. 1

Percent Interest 5.0
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,500	10-Oct-2006	17-Oct-2006	0.0	\$2	n/a	\$2
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with developing and implementing a Storm Water Pollution Prevention Plan and submitting a Notice of Intent, calculated from the investigation date until the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$2,500****TOTAL \$2**

Compliance History

Customer/Respondent/Owner-Operator: CN603107921 DRENNAN DAY CUSTOM HOMES INC. Classification: AVERAGE BY Rating: 3.01
Regulated Entity: RN105085211 DRENNAN DAY CUSTOM HOMES Classification: AVERAGE BY Site Rating: 3.01
DEFAULT

ID Number(s):
Location: 13100 W HWY 29, LIBERTY HILL, TX, 78642 Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: October 24, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 24, 2001 to October 24, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Brent Hurta Phone: 512-239-6589

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DRENNAN DAY CUSTOM HOMES
INC.
RN105085211**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2006-1871-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Drennan Day Custom Homes Inc. ("Drennan") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Drennan appear before the Commission and together stipulate that:

1. Drennan owns and operates a construction site at 13100 West Highway 29 in Liberty Hill, Williamson County, Texas (the "Site").
2. Drennan has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Drennan agree that the Commission has jurisdiction to enter this Agreed Order, and that Drennan is subject to the Commission's jurisdiction.
4. Drennan received notice of the violations alleged in Section II ("Allegations") on or about October 25, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Drennan of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Sixteen Thousand Dollars (\$16,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Drennan has paid Six Thousand Four Hundred Dollars (\$6,400) of the administrative penalty and Three Thousand Two Hundred Dollars (\$3,200) is deferred contingent upon Drennan's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance

with the terms of this Agreed Order. If Drennan fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Drennan to pay all or part of the deferred penalty. Six Thousand Four Hundred Dollars (\$6,400) shall be conditionally offset by Drennan's completion of a Supplemental Environmental Project.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Drennan have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on October 17, 2006, Drennan submitted a Notice of Intent to discharge storm water to the Wastewater Permitting Division.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Drennan has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, Drennan is alleged to have:

1. Failed to obtain authorization to discharge storm water associated with construction activities to water in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS 122.26(c), as documented during an investigation conducted on October 10, 2006.
2. Failed to obtain approval of a contributing zone plan ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.21(d), as documented during an investigation conducted on October 10, 2006.

III. DENIALS

Drennan generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Drennan pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Drennan's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Drennan Day Custom Homes Inc., Docket No. 2006-1871-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Drennan shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Six Thousand Four Hundred Dollars (\$6,400) of the assessed administrative penalty shall be offset with the condition that Drennan implement the SEP defined in Attachment A, incorporated herein by reference. Drennan's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that Drennan shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease any regulated activity at the Site until such time that a CZP has been reviewed and approved by the TCEQ Austin Regional Office;
 - b. Within 30 days after the effective date of this Agreed Order, submit a CZP for review and approval to:

Edwards Aquifer Protection Program
Austin Regional Office
Texas Commission on Environmental Quality
1921 Cedar Bend Drive, Suite A150
Austin, Texas 78758-5327

- c. Respond completely and adequately as determined by the TCEQ to all requests for information concerning the CZP within 30 days after the date of such request or by any other deadline specified in writing; and
 - d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 3.a. and 3.b. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to

demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Manager, Water Section
Austin Regional Office
Texas Commission on Environmental Quality
1921 Cedar Bend Drive, Suite A150
Austin, Texas 78758-5327

4. The provisions of this Agreed Order shall apply to and be binding upon Drennan. Drennan is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If Drennan fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Drennan's failure to comply is not a violation of this Agreed Order. Drennan shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Drennan shall notify the Executive Director within seven days after Drennan becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Drennan shall be made in writing to the Executive Director. Extensions are not effective until Drennan receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Drennan in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed

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1215 EAST 58TH STREET
CHICAGO, ILL. 60637
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FAX 773-936-5001
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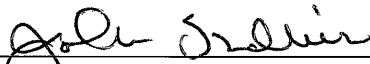
Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Drennan, or three days after the date on which the Commission mails notice of the Order to Drennan, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

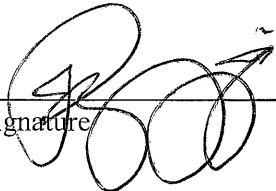
Date 8/23/2007

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Name (Printed or typed)
Authorized Representative of
Drennan Day Custom Homes Inc.

Date 3-19-07

Title President

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2006-1871-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Drennan Day Custom Homes Inc.
Penalty Amount:	Twelve Thousand Eight Hundred Dollars [\$12,800]
SEP Amount:	Six Thousand Four Hundred Dollars [\$6,400]
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation& Development Areas, Inc. ("RC&D")
Location of SEP:	Williamson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Respondent shall contribute to RC&D for its *Abandoned Tire Clean-Up project* in Williamson County. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the RC&D and the TCEQ. The SEP contribution will be used to clean up sites in Williamson County where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping.

SEP monies will be used to pay for the direct cost of collecting and disposing of tires. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dump sites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by

removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and
Development Areas, Inc. (RC&D)
1716 Briarcrest Drive, Suite 510
Bryan, TX 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

The Respondent or its agents shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of nonperformance, the check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Drennan Day Custom Homes Inc.
Agreed Order – Attachment A Docket No. 2006-1871-MLM-E

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

